

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JAMES COTTRELL,

Plaintiff,

**Hon. Hugh B. Scott**

v.

**04CV204E**

**Report  
&  
Recommendations**

ERIE COUNTY DISTRICT ATTORNEY et al.,

Defendants.

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Plaintiff (proceeding pro se initially as an inmate) has failed to appear at two Court conferences, including one sent with an Irby notice attached (Docket Nos. 26, 23, 24). Correspondence, including Orders setting these conferences, sent by the Court were returned from plaintiff's last known address, Camp Gabriels Correctional Facility, in Gabriels, New York, indicating that he was released from that last address.<sup>1</sup> Defense counsel also noted that correspondence he sent to plaintiff's disclosed address at Camp Gabriels was returned. Under this Court's Local Civil Rule 5.2, plaintiffs proceeding pro se are obliged to furnish the Court with their current address and to update the Court upon any change of address, as well as to be familiar with and abide by all local rules, W.D.N.Y. Loc. Civ. R. 5.2 (d), (e). As a result of plaintiff's failure to advise the Court of a change in address or to appear at scheduled

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<sup>1</sup>The last Order scheduling the June 19, 2007, conference was also sent by the Court to an address indicated in the papers attached to the complaint, an apartment in Tonawanda, New York, Docket No. 24. The Court received no indication that this Order was returned as an incorrect address.

conferences, it is recommended that this action **be dismissed with prejudice** against plaintiff for failure to prosecute. As with the last Order filed in this case, a copy of this Report shall be sent to plaintiff's last known addresses, both in Camp Gabriels and in Tonawanda.

Pursuant to 28 U.S.C. § 636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

**ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. § 636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as WDNY Local Rule 72(a)(3).**

**FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED HEREIN.** Thomas v. Arn, 474 U.S. 140 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. § 636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and W.D.N.Y. Local Civil Rule 72(a)(3).

Please also note that the District Court, on de novo review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v.

Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to W.D.N.Y. Local Civil Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

/s/ Hugh B. Scott

Hon. Hugh B. Scott  
United States Magistrate Judge

Buffalo, New York  
June 21, 2007